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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,682	03/13/2001	William J. Labarge	DP-302561/DEP-0128	3642

7590 10/22/2003  
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EXAMINER

JOHNSON, EDWARD M

ART UNIT PAPER NUMBER

1754

DATE MAILED: 10/22/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant N .

09/805,682

Applicant(s)

LABARGE ET AL.

Examiner

Edward M. Johnson

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-16,19,20,24-29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15,20 and 25-29 is/are allowed.
- 6) ☒ Claim(s) 1,4-14,16,24 and 31 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4-14, 16, 24, and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamamoto et al. US 6,518,213 B1.

Regarding claims 1, Yamamoto '213 discloses an exhaust gas purifying catalyst comprising alkaline earth exchanged zeolite and mordenite layer A (see column 6, lines 43-51 and Examples 1 and 4) coated with another layer containing alkaline earth (see column 4-9 and 18-21), wherein the overlying layer contains 60% or more alkaline earth (see column 11, lines 54-57) and 1-40% rare earth (see column 6, lines 52-55).

Regarding claims 16 and 24, Yamamoto '213 discloses an exhaust gas purifying catalyst comprising alkaline earth exchanged zeolite and mordenite layer A (see column 6, lines 43-

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51 and Examples 1 and 4) coated with another layer containing alkaline earth (see column 4-9 and 18-21), wherein the overlying layer contains 60% or more alkaline earth (see column 11, lines 54-57) and 1-40% rare earth (see column 6, lines 52-55), 1-40% Zr (see column 6, lines 52-64), and alumina sol (see Example 1).

Regarding claim 4, Yamamoto '213 discloses 60% or more alkaline earth (see column 11, lines 54-57).

Regarding claims 5-6, Yamamoto '213 discloses calcium (see column 6, lines 43-51).

Regarding claims 7-8, Yamamoto '213 discloses 1-40% Nd (see column 6, lines 52-55).

Regarding claims 9-12 and 31, Yamamoto '213 discloses 1-40% Zr (see column 6, lines 52-64).

Regarding claims 13-14, Yamamoto '213 discloses alumina sol (see Example 1).

***Allowable Subject Matter***

3. Claims 15, 20, and 25-29 are allowed.
4. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter: A catalyst containing the claimed

components in the percentage amounts specified in the instant claims 19 and 20 would not have been obvious to one of ordinary skill in the art at the time the invention was made.

**Response to Arguments**

6. Applicant's arguments filed 9/2/03 have been fully considered but they are not persuasive.

It is argued that in column 11, lines 54-57 of Yamamoto... (overlying layer). This is not persuasive because Applicant appears to admit that "60% weight % or more of all addition amount of Ba" is disclosed, arguing only that "this does not mean 60% of the overlayer comprises an alkaline earth metal." However, Applicant merely claims "at least about 50 weight percent of an alkaline earth metal" (emphasis added), not "of an overlying layer", as applicant appears to suggest. It is noted that the features upon which applicant relies (i.e., at least 50% of an "overlying layer" rather than "of an alkaline earth metal") are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is argued that as can be seen from the above Table... claimed amount of 50 weight percent. This is not persuasive for

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the reasons above. Applicant does not claim a percent of the layer. Applicant claims a percent "of an alkaline earth metal".

It is argued that regarding present Claim 24... ceramic oxide binder. This is not persuasive because alumina sol is disclosed (see Example 1).

#### **Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward M. Johnson whose telephone number is 703-305-0216. The examiner can normally be reached on M-F 6:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

EMJ  
October 9, 2003

  
STANLEY S. SILVERMAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700